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SUBJECT: IRAQ 201: CONSTITUTIONAL REVIEW

Classified By: Political Minister Counselor Robert Ford for reason 1.4
(d).

(U) This cable is part of our continuing series of messages intended to provide background for policy-makers on Iraq.

¶1. (C) Summary: For more than three years an issue hovering in the back of the political debates in Iraq is that of amending the Iraqi constitution that had been ratified in late 2005. Contentious issues such as hydrocarbons revenue sharing, federalism, and the status of Kirkuk and other disputed territories are unresolved. In 2005 to reconcile the immediate need for a constitution and volatile ethnic-sectarian political animosities, all the political factions agreed to form a special parliamentary committee that to draft amendments and start the process for a special constitutional amendment referendum that was to occur in ¶2006. That special committee has met many times but has not yet found a consensus on amendments and of late its work is moribund. Another attempt by the main political parties to find compromises on proposed amendments outside the parliamentary framework in late 2008 failed. The way forward is unclear: the Sunni Arabs sometimes still call for the amendment process to go forward, while the Kurdish parties and the Prime Minister and other Shia parties are not enthusiastic. Should the constitutional review process be revived to finally tackle the outstanding existential issues, this could lead to longer-term stability. It would do so like at the cost of worsened political divisions in the short term, especially between Arabs and Kurds over issues like the authorities of the central government, the budget allocations to the Kurds and Kirkuk. End Summary.

¶2. (SBU) Impasses over contentious issues such as hydrocarbons revenue sharing, federalism, and the status of Kirkuk and other disputed territories threatened to derail the constitutional drafting process in 2005. As a pragmatic way of reconciling the immediate need for a constitution and volatile ethnic-sectarian political animosities, the drafters mandated (via Article 142) establishment of a special parliamentary committee that would, in two year's time, resolve outstanding constitutional issues. With the most controversial issues deferred to a later date, the drafters were able to complete the Constitution, which was approved by national referendum in October 2005. The outstanding issues are still unresolved.

¶3. (SBU) The 29-member Constitutional Review Committee (CRC) was established on November 15, 2006. Article 142 stipulated that the CRC complete its work by March 2007, a deadline it missed by well over a year. Parliament has extended the CRC's mandate several times. In the course of its deliberations, the CRC published an interim report in May 2007 and a final report in July 2008. Both offered proposals for a number of uncontroversial amendments, e.g., stipulation that Baghdad as the nation's capital can't be annexed to a region, clarification on determining priority of regional vs. federal law in case of a dispute, and a regulatory framework for the to-be-established legislative upper chamber. The most contentious issues -- revenue sharing, federalism, the status of Kirkuk, and disputed internal boundaries (DIBs) --

were left unresolved.

¶4. (SBU) If the CRC were able to reach agreement on proposed constitutional amendments, these proposals would then have to be approved by an absolute majority of the parliament (138 members) and accepted by a majority of residents in a majority of Iraq's 18 governorates. There has been no movement on the agreed-upon amendment proposals, in part because Parliament has informally decided that all proposed amendments (i.e., including the controversial ones that were especially difficult) must be considered as a package. Parliament has extended the CRC's mandate through the next legislative term (April 14-June/July 2009), but the committee has not met for several months. According to our parliamentary contacts, there are no plans for it to meet. The constitutional review process formally continues, but in fact appears to be complete without resolution.

¶5. (C) The CRC does not appear to have broad GOI support, and many believe it is incapable of addressing the difficult core constitutional reform issues. These unresolved issues will likely be decided through Executive-driven political bargains rather than parliamentary-driven consensual procedures. The "Five Committees" initiative undertaken by the Prime Minister after the publication of the CRC's final report (reftel) reflects a gradual shifting of responsibility for constitutional reform from the parliament to the Executive. As a result of heightened Arab-Kurd tensions in Khanaqin in August 2008, KRG President Masoud Barzani and Prime Minister Maliki initiated the "Five Party Committee Talks" (ISCI, Dawa, IIP, KDP and PUK) in an attempt to come to an Executive consensus on DIBs/Kirkuk, oil,

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federalism/power-sharing, revenue/budget and security.

The Core Issues

¶6. (C) REVENUE DISTRIBUTION: The Constitution (Article 111) stipulates that oil and gas are owned by the people of Iraq in all the regions and governorates. It is silent, however, on how the revenues flowing from these natural resources are to be distributed, leaving ample room for divisive debate. While all agree that such revenues should be shared and in ways that comport with population sizes, census numbers are outdated, disputed and highly sensitive. The designation of the central government's share off the top for national expenditures, before allocations are made to the governorates, is another sensitive issue.

¶7. (C) KIRKUK: The status of Kirkuk (Article 140) and other internally disputed boundaries (DIBs) is intimately related to the question of revenue distribution, federalism, disputes over voting rights and the census, and the structure of national and regional security forces. Without having an accepted mechanism for equitable distribution of oil and gas revenues, Kirkuk, which contains one of Iraq's most significant oil fields, and other internal boundary areas, become natural flash-points. Iraq's natural resource endowments, when combined with diverging historical claims, a history of ethnic cleansing of Kurds and to a lesser extent Turkomen and forcible settlement of Arabs under the Saddam regime, and a sectarian-divided political and geographical landscape, make a political agreement necessary prior to a resolution of disputed boundaries through constitutional amendments.

¶8. (C) FEDERALISM: Finally, issues of federalism are similarly linked to the issue of revenue distribution and DIBs, notably including Kirkuk. The Iraqi leaders still must define more clearly the distribution of power within the executive branch (between the Prime Minister, President, and Council of Ministers), as well as the distribution of power

between the central, regional and provincial governments. What shape federalism will ultimately take in Iraq, whether an asymmetrical federal state composed of regions and self-sufficient provinces, or a more strongly confederal state, is a matter of heated debate. As stated above, this debate hinges on questions of revenue distribution, the status of unresolved boundary disputes, and a variety of other factors: a historical legacy and regional model associated with centralized, one-man rule; fears of a Shia-governed super-region in the South; and the likely existence of yet-to-be discovered oil and gas fields.

Comment

19. (C) The CRC is in a state of suspended animation. Should the constitutional review process be revived to finally tackle the outstanding existential issues, this could lead to longer-term stability, but likely exacerbate political divisions in the short term. Tensions surrounding the recent provincial elections, the publicly aired dispute between the Kurdish and Iraqi leadership, the heated rhetoric between the Prime Minister's Office and the parliament throughout the budgetary approval process, and the continual tensions along Iraq's disputed boundaries all suggest the need for, and the difficulties associated with, constitutional review, a process that is far from complete.

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